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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,371	04/01/2004	Christoph Becke	2001P14042WOUS	9654

46726 7590 07/29/2009
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EXAMINER

WILKENS, JANET MARIE

ART UNIT	PAPER NUMBER
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3637

MAIL DATE	DELIVERY MODE
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07/29/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/816,371
Filing Date: April 01, 2004
Appellant(s): BECKE ET AL.

James E. Howard
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 1, 2009 appealing from the Office action mailed June 4, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on September 8, 2008 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is substantially correct. It should also be noted that for claims 10 and 11 the lengths of the first and second storage compartment portions can have either equivalent lengths or different lengths (Figs. 1 and 3 and Para 0027 of the present application).

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims 9-13 and 16 appears on pages 12-14 of the Appendix to the appellant's brief. The minor error is as follows: in claim 9, the phrase "whereby the second vertically-directed storage depth of the second storage compartment portion is substantially the same as the first vertically-directed storage depth" has been deleted via the after-final amendment filed September 8, 2008.

A corrected copy of the claims appears in the claims appendix below.

(8) Evidence Relied Upon

2,074,785

GENTZ

3-1937

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 9, 10, 12, 13 and 16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gentz (2,074,785). Gentz teaches a refrigerator (Fig. 1) having a door with a first door storage compartment (35) and a second door storage compartment (34, Fig. 4; see Attachment A) comprising: at least one first generally boxed storage compartment portion (a) having

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a full first horizontally-directed depth (b) and a first vertically-directed storage depth (c); and at least one second generally boxed shaped storage compartment portion (d) having a front wall (front bars), the second storage compartment portion having a second horizontally- directed depth (e) being less than the full first horizontally-directed depth and following the first storage compartment portion in a longitudinal direction of the door storage compartment, and the front wall of the second storage compartment portion having a second vertically-directed storage depth (c also) substantially the same as the first vertically-directed storage depth (c). The compartment portions are separated by an intermediate wall (39). In the specification of Gentz, it is stated that the smaller basket portion (d) is "substantially" one-half the width of the larger portion (a; see page 2, column 1, lines 9-13); therefore, it conceivably could be on the smaller side of that half the width. However, even if this could not be assumed or considered inherent, it would have been an obvious design consideration to one having ordinary skill in the art to dimension the second compartment as desired, including forming its second portion with a smaller depth, depending on the desired need of the person designing/constructing the portion (and/or refrigerator), e.g. depending on intended storage uses, for aesthetic reasons, etc.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gentz. As stated above, Gentz teaches the limitations of claim 9, including two portions of a compartment with substantially equal lengths, the portions having different depths. Note: in Fig. 4, the length of the smaller portion (d) appears to be a bit longer than the larger portion (a); however, nothing is stated in the specification to support this

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assumption. For claim 11, Gentz fails to specifically teach that the portions have different lengths. However, it would have been an obvious design consideration to one having ordinary skill in the art to dimension the portions as desired, including forming them with different lengths, depending on the desired need of the person designing/constructing the compartment (and/or refrigerator), e.g. depending on intended storage uses, for aesthetic reasons, etc.

(10) Response to Argument

Addressing the arguments concerning the rejections over Gentz,: first, looking at the 102(b) interpretation of claims 9 and 16, Gentz teaches a smaller basket portion that is stated as being "substantially" one-half the width of the larger portion (see page 2, column 1, lines 9-13); therefore, it conceivably can be on the smaller side of that half the width, thus meeting the "less than half the width" limitation in the claims. Second, if looking at the 103 interpretation, it is contended that it would have been an obvious design consideration to dimension the second compartment of Gentz as desired, including forming its second portion with a smaller depth, depending on the desired need of the person designing/constructing the portion (and/or refrigerator), e.g. depending on intended storage uses, for aesthetic reasons, etc. Furthermore, the reason for the modified width/depth does not have to be the same as that of applicant's (Note: the lower shelf and bottles are not even claimed), intended storage use and aesthetics being a couple of reasons to design a storage compartment in a certain manner with a certain depth. Third, the examiner argues that Gentz does teach

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generally boxed shaped compartments (see Fig. 1; forward, bottom and rear rails form box shapes) divided by a member (39; see Fig. 4). The fact that the member is below the basket portions is irrelevant. The claim only requires an intermediate wall there between that separates them. Gentz's divider performs this function. That applicant's wall strengthens the shelf is not claimed. Fourth, the examiner contends that Gentz's front member/rails do constitute a "wall" (i.e. a feature that acts as a barrier), taking the broadest reasonable interpretation of the term "wall".

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Janet M. Wilkens/

Primary Examiner, Art Unit 3637

Conferees:

Lanna Mai /LM/

/Heather Shackelford/ for Meredith Petravick

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Claims Appendix

9. A door storage compartment for a refrigerator, the door storage compartment comprising:

at least one first storage compartment portion having a full first horizontally-directed depth and a first vertically-directed storage depth; and

at least one second storage compartment portion having a front wall, the second storage compartment portion having a second horizontally-directed depth being less than half of the full first horizontally-directed depth and following the first storage compartment portion in a longitudinal direction of the door storage compartment, and the front wall of the second storage compartment portion having a second vertically-directed storage depth substantially the same as the first vertically-directed storage depth.

10. The door storage compartment according to claim 9, wherein the first and second storage compartment portions have equivalent lengths.

11. The door storage compartment according to claim 9, wherein the first and second storage compartment portions have different lengths.

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12. The door storage compartment according to claim 9, wherein the first and second storage compartment portions are formed as a one-piece part.

13. The door storage compartment according to claim 9, further comprising an intermediate wall, and the first and second storage compartment portions are generally boxed shaped and separated by the intermediate wall.

16. A refrigerator, comprising:

a housing;

a door attached to the housing;

a first door storage compartment mounted on the door; and

a second door storage compartment mounted on the door above the first door storage compartment, the second door storage compartment

containing at least one first storage compartment portion having a full first horizontally-directed depth and a first vertically-directed storage depth, and at least one second storage compartment portion having a second horizontally-directed depth being less than the full first horizontally-directed depth and following the first storage compartment portion in a longitudinal direction of the

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second door storage compartment, the second horizontally- directed depth being less than half of the full first horizontally-directed depth and the second vertically-directed storage depth being substantially the same as the first vertically-directed storage depth.